

REMARKS

In response to the final Office Action dated December 2, 2009, the Assignee respectfully requests continued examination and reconsideration based on the above amendments and on the following remarks.

Claims 1-28 and 31-37 are pending in this application. Claims 29-30 and 38-50 were previously canceled without prejudice or disclaimer.

Rejection of Claims 36 & 37 under § 101

Claims 36 and 37 were rejected under 35 U.S.C. § 101 for claiming non-statutory subject matter. The preambles of claims 36 and 37 have been amended to recite a “*computer-readable storage medium*” (emphasis added). Support may be found at least at paragraph [0077]. The Office is thus respectfully requested to re-examine claims 36 and 37 in their current presentation.

Rejection under § 112

The Office rejected claims 1-28 and 31-37 under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. The independent claims have been amended, so the Office is respectfully requested to re-examine these claims in their current presentation.

Rejection of Claims under § 102 (e)

The Office rejected claims 1-8, 10-22, and 24-36 under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent Application Publication 2003/0172374 to Vinson, *et al.*

These claims, though, are not anticipated by *Vinson*. These claims recite, or incorporate, features that are not taught or suggested by *Vinson*. Independent claim 1, for example, recites

“classifying the subscriber content-choice data based on a percentage of historical viewing time for a genre” and “receiving a request for a number of viewers having a classification.” Support may be found at least at paragraphs [0022], [0046], [0050], and [0057]. Independent claims 15 and 36 recite similar features.

Vinson does not anticipate at least these features. *Vinson* describes a database that stores set-top box events. *See* Published U.S. Patent Application 2003/0172374 to *Vinson* at paragraph [0027]. Each set-top box’s viewing habits may be correlated to demographic data, news, weather, sales, and content identifiers. *See id.* at paragraphs [0032], [0033], [0045], and [0083]. A “Data Center” may store the collected data. *See id.* at paragraph [0087]. Users may query the data center and extract “meaningful” information. *See id.* at paragraph [0088]. Still, though, *Vinson* fails to teach or suggest *“classifying the subscriber content-choice data based on a percentage of historical viewing time for a genre” and “receiving a request for a number of viewers having a classification,”* as the independent claims recite. Independent claims 1, 15, and 36 cannot be anticipated by *Vinson*.

Independent claims 15 and 36 recite even more distinguishing features. Independent claims 15 and 36, for example, recite *“collecting subscriber content-choice data from a plurality of service providers as a file having a line entry listing a primary classification and a sub-classification for a subscriber based on a percentage of historical viewing time for genres of programming”* (emphasis added). Support may be found at least at FIG. 2 of the as-filed application. Because *Vinson* also fails to teach or suggest these features, independent claims 15 and 36 cannot be anticipated by *Vinson*.

Independent claim 36 recites still more distinguishing features. Independent claim 36 recites *“merging, by a network server, content metadata with the subscriber’s events to describe the subscriber’s content access selections.”* Support for these features may be found at least at column 19, lines 25-55 of U.S. Application 09/496,825 to Grauch, *et al.*, which is incorporated by reference. Independent claim 36 also recites *“applying priority assignments to the content metadata such that metadata from an electronic programming guide has a lower priority than*

national ad metadata and local ad insert metadata has a higher priority than the national ad metadata.” Support for these features may be found at least at column 19, line 56 through column 20, line 23 of U.S. Application 09/496,825 to Grauch, *et al.*, which is incorporated by reference. Because *Vinson* also fails to teach or suggest these features, independent claim 36 cannot be anticipated by *Vinson*.

Claims 1-8, 10-22, and 24-36, then, are not anticipated by *Vinson*. Independent claims 1, 15, and 36 recite many features that are not taught or suggested by *Vinson*. Their respective dependent claims incorporate these same features and recite additional features. Claims 1-8, 10-22, and 24-36, then, are not anticipated, so the Office is respectfully requested to remove the § 102 (e) rejection of these claims.

Rejection of Claims under § 103 (a)

The Office rejects claims 9, 23, and 37 under 35 U.S.C. § 103 (a) as being obvious over *Vinson* in view of U.S. Patent Application Publication 2002/0123928 to Eldering, *et al.*

These claims, though, cannot be obvious over *Vinson* with *Eldering*. These claims depend, respectively, from independent claims 1, 15, and 36. These claims, then, incorporate the same distinguishing features discussed above, and these claims recite additional features. As the above paragraphs explained, *Vinson* fails to teach or suggest all the features of independent claims 1, 15, and 36, and *Eldering* does not cure the deficiencies. *Eldering* extracts information, such as XML files, to generate subscriber profiles. See U.S. Patent Application Publication 2002/0123928 to Eldering, *et al.* at [0134]. Even so, the proposed combination of *Vinson* with *Eldering* still fails to teach or suggest all the features of independent claims 1, 15, and 36, from which claims 9, 23, and 37 depend. One of ordinary skill in the art, then, would not think that claims 9, 23, and 37 are obvious. The Office is respectfully requested to remove the § 103 (a) rejection of these claims.

If any questions arise, the Office is requested to contact the undersigned at (919) 469-2629 or scott@scottzimmerman.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott P. Zimmerman", with a stylized flourish at the end.

Scott P. Zimmerman
Attorney for the Assignee
Reg. No. 41,390